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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 LOLITA SCHAGENE, an individual,

CASE NO. 13cv0333 WQH (RBB)

13
14 Plaintiff,

ORDER

15 vs.

16 RICHARD V. SPENCER, Secretary of
17 the Navy,

18
19 Defendant.
20

21 HAYES, Judge:

22 The matter before the Court is the motion to dismiss (ECF No. 195) filed by
23 Defendant Richard V. Spencer, Secretary of the Navy.

24 **BACKGROUND**

25 On February 12, 2013, Plaintiff Lolita Schagene commenced this action by filing
26 a complaint in this Court. (ECF No. 1). Trial commenced on December 1, 2015, and
27 the jury issued a verdict in favor of Defendant on December 3, 2015. (ECF No. 135).
28 On January 8, 2016 this Court entered judgment. (ECF No. 146). Plaintiff appealed.

On August 22, 2017 the Ninth Circuit Court of Appeals reversed the Judgment

1 and remanded the case. (ECF No. 154). The Court set trial to commence on September
2 11, 2018. (ECF No. 173). On August 17, 2018 Defendant filed the motion to dismiss.
3 (ECF No. 195). On August 24, 2018, Plaintiff filed opposition. (ECF No. 210).

4 Defendant contends that this Court lacks subject matter jurisdiction under
5 Federal Rule of Civil Procedure 12(b)(1) to resolve Plaintiff's retaliation claim because
6 Plaintiff did not exhaust her administrative remedies prior to filing her Complaint.
7 Specifically, Defendant contends that Plaintiff failed to allege any instances of
8 retaliation in the Equal Employment Opportunity complaint ("EEO complaint") that
9 underlies this case. Plaintiff contends that this Court should find that subject matter
10 jurisdiction exists because the retaliation claim is reasonably related to Plaintiff's EEO
11 allegations.

12 **FACTS**

13 The complaint alleges that Plaintiff was subjected to sexual harassment by her
14 male co-workers and supervisors during her employment as a Recreation Aide at
15 Fiddler's Cove Marina and Recreational Park in San Diego, California ("Fiddler's
16 Cove") from 2004 until 2011. The Complaint alleges claims under Title VII for (1) sex
17 discrimination; (2) sexual harassment; and (3) retaliation. Plaintiff alleges that she was
18 subjected to "harassment, gender hostility, hostile work environments, acts of
19 intimidation, threats of sexual and physical assault, and constructive termination from
20 her employment" because she "complained about such harassment and gender
21 discrimination." (ECF No. 1 ¶¶ 50–52). Plaintiff alleges her complaints to superiors
22 constitute a protected activity, and her subsequent treatment by coworkers constitutes
23 an adverse employment action in violation of Title VII. (ECF No. 1 ¶¶ 50–53).

24 Prior to filing her complaint, Plaintiff filed a formal EEO complaint in 2011.
25 (ECF No. 195-3 at 27). In the EEO complaint, Plaintiff detailed an instance of
26 harassment that occurred in January 2009. The EEO complaint stated,

27
28 As we drove on the Silver Strand past Navy housing my supervisor,
Brandon Workman, lifted his right short pant leg with his right hand,

1 revealing his penis. He then grabbed my hand and pulled it toward his
2 penis. I immediately recoiled my hand before it touched his penis. As a
3 result of the above incident, on or about January 20, 2011, I quit. Mr.
Workman's conduct was unwelcome and caused me to quit my job.

4 (ECF No. 195-3 at 28). Plaintiff stated that because of the incident, she could no
5 longer remain at Fiddler's Cove, and quit. *Id.* When asked in her pre-complaint intake
6 questionnaire why "this action was taken against [her]," Plaintiff checked
7 corresponding boxes for "Race," "Sex," and "Age." Plaintiff did not check the box for
8 "Reprisal." *Id.* at 8.

9 In response to an EEOC request for clarification, Plaintiff provided additional
10 details to EEOC investigators regarding Plaintiff's EEO complaint. *Id.* at 36. Plaintiff
11 stated that "it was very uncomfortable to work with Brandon Workman after [the truck
12 exposure] incident." *Id.* at 39. Plaintiff further detailed a 2011 conversation where
13 coworkers discussed a plan to rape Plaintiff. *Id.* Plaintiff stated that coworkers
14 punctured her tires after Plaintiff complained to her coworkers and Mr. Workman about
15 the rape conversation. *Id.*

16 LEGAL STANDARD

17 Federal judicial power extends only to cases and controversies over which a court
18 has subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Under Title VII, a plaintiff
19 must exhaust her administrative remedies by filing a timely claim with the EEOC, or
20 the appropriate state agency, in order to afford the agency an opportunity to first
21 investigate the charge. *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1099 (9th Cir.
22 2002). After the Plaintiff has exhausted her administrative remedies, federal subject
23 matter jurisdiction "extends over all allegations of discrimination that either fell within
24 the scope of the EEOC's *actual* investigation or an EEOC investigation which *can*
25 *reasonably be expected* to grow out of the charge of discrimination." *Id.* at 1100 (citing
26 *EEOC v. Farmer Bros.*, 31 F.3d 891, 899 (9th Cir. 1994)) (emphasis in original)
27 (internal quotations omitted); *Oubichon v. North American Rockwell Corp.*, 482 F.2d
28 569, 571 (9th Cir. 1973) (holding that federal jurisdiction extends to all claims "like and

1 reasonably related” to claims made in the administrative context).

2 In order to effectuate Title VII’s remedial purpose, courts are to decide which
3 claims not charged in an EEOC complaint can “reasonably be expected to grow out of”
4 the charges in the EEOC complaint. Since claims are typically made by those
5 “unschooled in the technicalities of formal pleading,” the Court reviews facts “with
6 utmost liberality.” *Kaplan v. Int’l Alliance of Theatrical & Stage Employees*, 525 F.2d
7 1354, 1359 (9th Cir. 1975). When determining whether claims a plaintiff made in her
8 civil complaint are reasonably related to claims made in her administrative complaint,
9 it is appropriate to look beyond the explicit formal charge. The Court considers such
10 factors as “the alleged basis of the discrimination, dates of discriminatory acts specified
11 within the charge, perpetrators of discrimination named in the charge, and any locations
12 at which discrimination is alleged to have occurred.” *Maui Police Dept.*, 276 F.3d at
13 1100.

14 DISCUSSION


15 Plaintiff alleged in her EEO complaint that her supervisor, Brandon Workman,
16 exposed himself to her in January 2009, and that it “was very uncomfortable” to work
17 with Brandon Workman “after [the] incident.” (ECF No. 195-3 at 39). Plaintiff’s
18 retaliation claim in the complaint in this case arises in part from this same conduct; that
19 is, Brandon Workman’s allegedly hostile treatment of Plaintiff in the period between
20 the alleged vehicle exposure incident and Plaintiff’s resignation. The Court concludes
21 that the retaliation claim is reasonably related, and could “reasonably be expected to
22 grow out of” the charges in the EEO complaint. *See Farmer Bros.*, 31 F.3d at 899.

23 In the clarification statement Plaintiff submitted to the EEOC in connection with
24 her EEO complaint, EEOC investigators were put on notice of Plaintiff’s report that
25 Plaintiff’s coworkers discussed a plan while on duty at Fiddler’s Cove to rape Plaintiff.
26 (ECF No. 195-3 at 39). Plaintiff stated that coworkers punctured her tires after she
27 confronted them about the rape conversation. *Id.* at 39–40. These allegations involve
28 the same coworkers involved in the retaliation claim, at the same time period as the

1 retaliation claim, in the same physical location as the retaliation claim. A reasonable
2 EEOC investigation of the allegations made in Plaintiff's EEO complaint would
3 include investigation of the same facts alleged in Plaintiff's retaliation claim in this
4 case. *See Maui Police Dept.*, 276 F.3d at 1100-03 (considering factual allegations
5 made in a pre-complaint questionnaire, the basis, dates, locations and perpetrators of the
6 alleged discrimination, and finding that plaintiff's civil sexual discrimination and
7 harassment claims were reasonably related to plaintiff's administrative complaint
8 alleging "race and retaliation harassment"). Construing the allegations made by Plaintiff
9 in her EEO complaint with the "utmost liberality," this Court finds that Plaintiff
10 exhausted her administrative remedies with regard to her retaliation claim. Defendant's
11 motion to dismiss is denied.

12 **IT IS HEREBY ORDERED** that Defendant's motion to dismiss (ECF No. 195)
13 is DENIED.

14 DATED: September 7, 2018

15 
16 **WILLIAM Q. HAYES**
United States District Judge